

East Herts Council

Executive

Date of Meeting: 7th July 2020

Report by: Cllr George Cutting, Executive Member for Corporate Services

Report title: Revised Regulation of Investigatory Powers Act (RIPA) Policy and Use of Social Media in Investigations Policy

Ward(s) affected: ALL

Summary

The Regulation of Investigatory Powers Act regulates the manner in which certain public bodies, including Local Authorities, may conduct surveillance and access a person's electronic communications. The Council must have an up to date policy governing its use of RIPA, and also designate a Senior Responsible Officer and Authorising Officers under the Act.

The Investigatory Powers Commissioner's Office also expects that Local Authorities pay particular attention to how it uses social media when engaging in investigatory practices, in order to ensure that it remains legal at all times.

RECOMMENDATIONS THAT:

- (a) The revised Regulation of Investigatory Powers Act (RIPA) Policy at Appendix A be adopted.**
- (b) The new Use of Social Media in Investigations Policy at Appendix B be adopted.**

1.0 Proposal(s)

- 1.1 It is proposed that the council's existing Regulation of Investigatory Powers Act (RIPA) Policy, which has not been reviewed since 2010, be revised and replaced taking into account significant legislative changes which have occurred in the intervening decade.
- 1.2 That a new Use of Social Media in Investigations Policy be adopted in order to deal specifically with investigations carried out via these means.
- 1.3 That other steps being taken with respects the findings of the IPCO report be noted.
- 1.4 The Council's Constitution states that the Executive shall "determine recommendations and other matters referred to it by committees, sub-committees or the Council".
- 1.5 The revised RIPA Policy and Use of Social Media in Investigations Policy went before Overview & Scrutiny on 16th June 2020 and was recommended to Executive to adopt both policies.

2.0 Background

- 2.1 The Regulation of Investigatory Powers Act 2000 ("RIPA") came into force on 25 September 2000 and sought to regulate covert investigation practices undertaken by a number of bodies, including local authorities.
- 2.2 Local authorities must have an up to date policy in place which is reviewed and approved by Members annually. Additionally the Council's use or otherwise of RIPA needs to be reported to Members on a quarterly basis.
- 2.3 The Investigatory Powers Commissioner's Office ("IPCO") independently scrutinises the use of RIPA powers by the investigatory bodies that are subject to it.
- 2.4 The Commissioners inspect Councils to ensure

compliance with RIPA and can audit/review the Council's policies and procedures, as well as individual authorisations.

- 2.5 The IPCO carried out a physical inspection of East Herts Council on 21st November 2019. The resulting report gave a recommendation of "Critical", outlining several areas where the Council was not meeting legal requirements, and eight actions that were required to address them.
- 2.6 One such area was the policy document itself which had remained unchanged since 16th December 2010, and was therefore not reflective of several quite big legislative changes which took place with the introduction of The Protection of Freedoms Act 2012 and the Investigatory Powers Act 2016, as well as updated Home Office Codes of Practice.
- 2.7 The IPCO report also stated that *"At present, there are three designated Authorising Officers, as well as the Chief Executive and his Director. In light of the low/absent use of the powers in recent times, and the change in roles and responsibilities of some officers, it was timely to look afresh at who was best placed to be designated under the revised Policy."*
- 2.8 The updated policy has addressed this and designates new Authorising Officers at Appendix B of the policy.

Social Media

- 2.9 Another area of societal change since 2010 is the use of social media, which has become far more ubiquitous in our daily lives than it was at the start of the last decade. The IPCO expects the use of social media to be specifically included in all up to date policies, and is covered at paragraph 13 of the new draft policy.
- 2.10 Further, it is proposed that with the introduction of the Use of Social Media in Investigations Policy, an entirely new policy which has not previously existed at East

Herts, the Council will go above and beyond what is required as a minimum so as to ensure that this ever changing landscape is given the attention it deserves.

Other required changes

2.11 Of the eight actions identified in the IPCO report, adoption of the new Policy would address actions A1, A4 and A8, namely;

A1 – *The Council's RIPA Policy document must be updated to incorporate the numerous legislative changes since 2010,*

A4 – *Designation of Senior Responsible Officer and Authorising Officers to be determined in early 2020,*

- Addressed in Appendix B of the draft policy

A8 – *Ensure procedures are clear should judicial approval under The Protection of Freedoms Act 2012 be required*

- Addressed at paragraph 7.7 of the draft policy.

2.12 The remaining five requirements, and how these will be met are as follows;

A2 – *Regular updates to elected members and their annual approval of the RIPA policy must take place.*

- Quarterly reporting of the Council's use, or otherwise, of RIPA will begin to take place through the Member's Information Bulletin, ensuring that elected members are kept informed of its application at East Herts Council. The RIPA policy will also be kept under constant review, with an annual review reported to Overview and Scrutiny, and any proposed changes latterly adopted by the Executive.

A3 – *A Central Record must be reinstated.*

- It is a requirement for there to be a centrally retrievable record of all provisional and judicially approved authorisations under RIPA. It had been thought at the time of the IPCO inspection that East Herts Council had failed to maintain such a

register however in the months since the inspection; an old central register was found. This Central Record has been updated and is now reinstated.

A5 – *Training to be maintained on a regular basis, designed to incorporate social media guidance and awareness raising amongst officers.*

- East Herts fared well on the matter of training, with the IPCO report stating that “a much better situation existed in relation to RIPA training, which had been provided on a regular and suitably tailored basis to a good range of officers in September 2016, March 2017 and July 2018.” This will continue, and broaden to include the use of social media and the new Use of Social Media in Investigations Policy.

A6 – *Determine internal quality assurance regime and means of updating Senior Leadership Team on regular basis.*

- Internal oversight of RIPA will sit with the Head of Legal and Democratic Services, who will ensure that the topic, as well the Council’s use, or otherwise, of RIPA powers is reported to Leadership Team on a quarterly basis.

A7 – *Check that any recording equipment is stored, managed and inventoried correctly.*

- Noise monitoring equipment and cameras held by the Council for investigatory purposes are managed by the relevant enforcement teams. Each team has been asked to conduct a new inventory of the equipment they keep, and to maintain this regularly so that it is kept up to date.

Conclusion

2.13 The IPCO Inspector stated in her report that the inspection in November 2019 “revealed a local authority

that had, for whatever reason, taken its “eye off the ball” as far as RIPA policies and procedures and internal oversight was concerned.”

- 2.14 The revised policy, newly designated Authorising Officers and the additional steps outlined above at paragraph 2.12 above will rectify that situation and place East Herts back in a state of compliance.

3.0 Reason(s)

- 3.1 The adoption of the new RIPA Policy is a matter for the Executive to consider and adopt.
- 3.2 The revised policies went before the Overview and Scrutiny Committee on 16th June 2020. Members of the committee commended the revised policies and unanimously support their adoption, remarking that they are robust, detailed and very thorough.
- 3.3 No alterations were proposed by the Overview and Scrutiny Committee, and it is their recommendation that the policies be adopted by the Executive unchanged.

4.0 Options

- 4.1 The adoption of a RIPA Policy is a requirement to ensure compliance with legislation and Home Office Codes of Practices.
- 4.2 The Use of Social Media in Investigations Policy is not specifically required, and can therefore be adopted or rejected.

5.0 Risks

If the policy was not revised

- 5.1 East Herts Council would be in breach of its legal requirements to comply with the Regulation of Investigatory Powers Act, the Protection of Freedoms Act, the Investigatory Powers Act 2016 as well as Home Office Codes of Practice.
- 5.2 The Council would fail to comply with the IPCO report

and be at a heightened risk of breaching human rights law.

If the policy was revised

- 5.3 The Council would become compliant with relevant law governing the use of RIPA.
- 5.4 The IPCO's recommendations will have all been complied with and would address the "Critical" finding made by the IPCO inspection in November 2019.

6.0 Implications/Consultations

- 6.1 The implications of not adopting the new RIPA Policy are grave, including potential breaches of criminal law.
- 6.2 This is less so of the Use of Social Media in Investigation Policy, but it is advised that this is also implemented so as to address East Herts Council's lack of policy on this matter currently.

Community Safety

Yes – Allows the Council to legal make use of investigatory practices governed by RIPA, which could be utilised to protect communities from illegal activities.

Data Protection

No

Equalities

No

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

Yes – The use of powers under RIPA directly affects a person’s right to respect for private and family life under Art 8 of the Human Rights Act. It is imperative that RIPA is utilised correctly so as to make legal those potential intrusions.

Legal

Yes – The Council is not in compliance with the relevant legislation and Home Office Codes of Practice unless and until it adopts a new RIPA policy.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

- 7.1 Appendix A – Draft RIPA Policy
- 7.2 Appendix B – Draft Use of Social Media in Investigations Policy.

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